



IRA A. JACKSON  
COMMISSIONER

# *The Commonwealth of Massachusetts*

*Department of Revenue*

*Leverett Saltonstall Building*

*100 Cambridge Street, Boston 02204*

August 2, 1984

You request a ruling regarding the application of the Massachusetts sales tax to sales of videotaped advertisements by ("Company"). The Company produces the videotapes and then sells them for use on local cable television stations.

Chapter 64H, Section 2 imposes a five percent sales tax on retail sales of tangible personal property. A sale is defined as any transfer of title or possession of tangible personal property for consideration. (G.L. c. 64H, § 1(12)(a)). A sale is further defined as "[a] transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication." (G.L. c. 64H, § 1(12)(c)).

Chapter 64H, Section 1(13)(c) excludes from the definition of a retail sale "professional, insurance, or personal service transactions which involve no sale or which involve sales as inconsequential elements for which no separate charges are made." The Massachusetts Supreme Judicial Court set out the standard for determining whether or not a transaction is a service transaction in Houghton Mifflin Co. v. State Tax Commission:

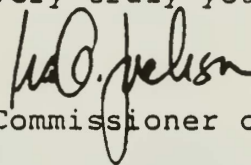
[t]he test is the object of the transaction. If the buyer's fundamental object is to obtain the item of personal property transferred to it, the sale of that property cannot reasonably be considered "inconsequential" and the transaction cannot reasonably be considered one for personal service. (373 Mass. 772, 775 (1977)).

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The Sales and Use Tax Regulation on Advertising Agencies states that sales of commercials "embodied in a tangible form, such as film or videotape," by a producer or a studio are subject to sales tax. "[T]he real object of the transaction is a transfer of tangible personal property, and a tax applies to the total amount paid by the purchaser for the commercial." (830 CMR 64H.05(2)(c)).

The sales of videotaped advertisements are transactions the object of which is to obtain the videotaped advertisements, not to obtain a personal service. Therefore, the sales of videotaped advertisements by the Company are subject to the sales tax.

Very truly yours,

A handwritten signature in dark ink, appearing to read "W. O. Jelison". The signature is fluid and cursive, with the first and last names being more prominent.

Commissioner of Revenue

IAJ:JES:mf

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